



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 5, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1589

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101266.

Travis County (the "county") received a request for five categories of documents relating to Elinor Catherine Kosta-Rodriguez, a former county employee. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.107 of the Government Code. You have submitted samples of the documents for which the county claims an exception.¹ We have considered the exceptions you claimed and have reviewed the sample documents.

You claim that the information in Exhibit "A" is excepted from required public disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Having reviewed the information in Exhibit "A," we agree that the county must withhold part of it under section 552.101 of the Government Code. We have

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

marked the information that must be withheld. The remainder of the information in Exhibit "A" may not be withheld under section 552.101.

You claim that the information in Exhibit "B" is excepted from required public disclosure under sections 552.101 and 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Therefore, we will first address whether section 552.101 applies to the information contained in Exhibit "B."

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate

aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy.²

Section 552.101 also encompasses information made confidential by other statutes. This office has concluded that information collected under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the “ADA”), from an applicant or employee concerning that individual’s medical condition and medical history is confidential under section 552.101 of the Government Code, in conjunction with provisions of the ADA. Open Records Decision No. 641 (1996). This type of information must be collected and maintained separate from other information and may be released only as provided by the ADA. We enclose a copy of Open Records Decision No. 641 (1996) for your information. If any of the information on the enclosed application was collected under the ADA, the county must withhold it pursuant to the reasoning in Open Records Decision No. 641 (1996).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the

²You state that, as the former employee had made the election under section 552.024 to keep information relating to her home address and home telephone number confidential, you are withholding that information under section 552.117 of the Government Code. You claim that, as the employee made the election under section 552.024 prior to the amendment of section 552.117, her social security number must be released. We note that federal law may make this social security number confidential. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. You claim that the highlighted information in Exhibit "C" is excepted from disclosure under section 552.107(1). We agree that most of the highlighted information contains client confidences and may be withheld under section 552.107(1). We have marked the information that may not be withheld under section 552.107(1).

Finally, you claim that the highlighted information in Exhibit "D" is excepted from disclosure because that information is similar in nature to a key, combination lock number, or a computer code, which are not encompassed by chapter 552 of the Government Code. You claim that, if the information is subject to chapter 552, it is excepted from disclosure under section 552.108 of the Government Code. In Open Records Decision No. 581 (1990), this office concluded that certain types of "information" are not within the parameters of chapter 552. In reaching this conclusion, this office reasoned:

We...believe that it requires no citation to note the legislature's awareness of the responsibility of public officers and employees for public property entrusted to their care. Accordingly, we cannot believe that the legislature could have intended that the Open Records Act compromise the physical security of information management systems or other government property. Nor is such a result necessary to accomplish the often-quoted purpose set forth in the preamble to the Open Records Act to provide the people with "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees."

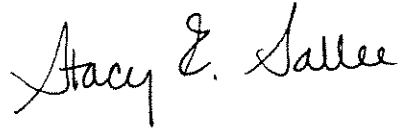
The term "information" as used in the Open Records Act is certainly comprehensive and this opinion in no way limits the applicability of the term only to records required to be kept by law or which can be demonstrated to have some public significance. [Citations omitted]. However, where information has no other significance than its use as a tool for the maintenance, manipulation, or protection of public property, we find that it is not the kind of information made public by section 3(a) of the Open Records Act.

Open Records Decision No. 581 (1990) at 5-6. Here, the highlighted information is a password necessary to access the county's computer system. The primary purpose of a password is to protect the integrity of public property. Therefore, based on the reasoning in Open Records Decision No. 581 (1990), we conclude that the highlighted information in Exhibit "D" is not subject to the provisions of chapter 552 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 101266

Enclosures: Submitted documents

cc: Mr. Wade A. Forsman
Clark, West, Keller, Butler & Ellis, L.L.P.
4800 Renaissance Tower
Dallas, Texas 75270-2146
(w/o enclosures)